Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1995

Edward W. Bowlin, *Petitioner*

v.

Lonnie Mease, Sheriff, *Respondent*

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Edward W. Bowlin III
312 Weaver Avenue
Lake Wales, Florida 33853
(941) 676-3356

27pp

QUESTIONS PRESENTED

Bowlin was arrested without a warrant. Bowlin was arraigned and entered a plea of not guilty; bond was set. A determination of probable cause was neither made nor requested. Bowlin was unable to post bond and was remanded back to the custody of Sheriff Mease, where he remained for nineteen days. The questions presented are:

1. Does an arraignment and a bond hearing, which does not include a probable cause determination, fulfill the Fourth Amendment requirement of a judicial determination of probable cause which is a prerequisite to extended restraint of liberty following an arrest, which the courts of appeals are in conflict with this Court?

2. If not, when a Sheriff fails to request and secure a *Gerstein* judicial determination of probable cause at a pretrial detainee's arraignment and the detainee is remanded back to his custody, is a Sheriff legally obligated to hold the detainee, which the courts of appeals are in conflict with this Court?

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PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Edward W. Bowlin III, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eight Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, p.A1) is unpublished. The opinion of the district court (App., *infra*, p.A4) is unpublished.

JURISDICTION

The judgment of the Court of Appeals, Eighth Circuit, was entered on January 25, 1996 (App., *infra*, p.A1). The Court of Appeals, Eighth Circuit, denied a timely petition for rehearing on March 4, 1996 (App., *infra*, p.A8). On April 4, 1996, Justice Thomas signed an order extending the time for filing this petition for certiorari to and including August 1, 1996. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

1. Fourth Amendment to the Constitution of the United States:

> "The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated . . ."

2. Fourteenth Amendment to the Constitution of the United States:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

Bowlin sued Mease in the district court, claiming Mease's extended detention of him without a judicial determination of probable cause violated his Fourth and Fourteenth Amendment rights. The jurisdiction of the district court was invoked under 28 U.S.C. 1331 and 1343(3), being an action authorized by law to redress the deprivation under color of state law, statute, custom, and usage of a right, privilege, and immunity by the Fourth and Fourteenth Amendments to the Constitution of the United States. (Rec. Doc# 1)

On April 6, 1992, at approximately 11:21 a.m., a Stone County, Missouri deputy arrested Bowlin (Petitioner) without a warrant for failing to display a valid license plate, and for failing to produce a driver's license. On April 7, at approximately 5:31 p.m., Bowlin was arraigned before Stone County Circuit Court Judge William Kirsch. After Bowlin entered a plea of not guilty, Judge Kirsch set bond at $500. [A determination of probable cause was never made nor requested.] Because Bowlin was unable to post bond, Judge Kirsch remanded him back to the custody of Stone County Sheriff Lonnie Mease (Respondent), where Bowlin remained for nineteen days until bond was posted. (App. *infra*, p.A1-A2, A5-A6)

Bowlin's conviction on the "no drivers license" charge was reversed, *State v. Bowlin*, 850 S.W.2d 116 (Mo.App.S.D. 1993), and was Nolle prosequi. An Absolute Order In Prohibition prevented the prosecution of the "license plate" charge. *State, ex rel., Edward W. Bowlin v.*

Honorable Scott S. Sifferman, Case No. 18465-1. (Mo.App.S.D. 1993)

A. Proceedings in the District Court

On June 7, 1995, the district court granted Mease's second motion for summary judgment. The district court ruled that even though Bowlin was not given a probable cause determination, Bowlin was given all the process normally received in a *Gerstein* probable cause determination hearing and, therefore failed to show that the thirty-hour delay before arraignment was unreasonable.

> "In an affidavit submitted in support of Defendant's motion, Judge Kirsch stated that at this hearing, a determination of probable cause was neither made nor requested." (App., *infra*, p.A6)
>
> * * *
>
> "In the case at bar, Plaintiff's arraignment and bond hearing took place approximately 29 hours after his arrest. The Court finds that such a hearing provided Plaintiff with all the process normally received in a Gerstein probable cause determination hearing.[2]" (*Id*, p.A6-A7)
>
> * * *
>
> (court's foot note) "Nonetheless, the Court strongly urges state trial judges to make an express, detailed and specific determination of probable cause in situations such as the one at bar. Failure to follow this dictate will result, in all

likelihood, in additional federal court intervention in state criminal procedure." (*Id*, p.A7)

B. Proceedings in the Circuit Court

On July 3, 1995, Bowlin timely filed a notice of appeal to the United States Court of Appeals, Eighth Circuit. The jurisdiction of the court was invoked under 28 U.S.C. §1291.

On January 25, 1996, the circuit court affirmed the judgment of the district court. The court held that because, Judge Kirsch remanded Bowlin back into Mease's custody until Bowlin had posted bond, Mease was legally obligated to hold Bowlin. The court also held that Mease could not be held liable for the extended restraint of Bowlin's liberty from Judge Kirsch's failure to make a probable cause determination at his arraignment.

> "Judge Kirsch's affidavit, which was submitted by Mease, stated that at this hearing, [a] determination of probable cause was neither made nor requested." (App., *infra*, p.A2)
>
> * * *
>
> "We agree with the District Court that Bowlin failed to show the thirty-hour delay before arraignment was unreasonable. (cites omitted) Furthermore, Mease cannot be liable for any constitutional violation resulting from Judge Kirsch's failure to make a probable cause determination at Bowlin's arraignment, because Judge Kirsch's order remanding

Bowlin into Mease's custody until Bowlin had posted bond legally obligated Mease to hold Bowlin." (*Id.* p.A3)

REASONS FOR GRANTING THE PETITION

The issue of a pretrial detainee's Fourth Amendment probable cause determination is extremely important. There are Court of Appeals' decisions that conflict with Supreme Court decisions. This is a timely opportunity to provide necessary guidance on these conflicts.

I. The Court of Appeals' Interpretation of a *Gerstein* Judicial Determination of Probable Cause Conflicts With the Supreme Court's Decision

In *Gerstein v. Pugh*, 420 U.S. 103, two men, Pugh and Henderson, were arrested in Dade County, Florida. Each of the men were charged with offenses under a prosecutor's information. Pugh was denied bail because one of the charges against him carried a potential life sentence; and Henderson, like Bowlin in the case at bar, was unable to post the set bond.

In Florida, at that time, there were only two ways a person could obtain a judicial determination of probable cause: (1) a statute allowing a preliminary hearing after 30 days, (2) an arraignment, which the Federal District Court found was often delayed a month or more after arrest. Pugh and Henderson filed a class action against Dade County officials in the Federal District Court, claiming a constitutional right to a

judicial hearing on the issue of probable cause.

After a judgment was entered in the case by the District Court, and was appealed to the Circuit Court, and was remanded back to the District Court for specific findings on the constitutionality of the new Dade County system, the Florida Supreme Court amended the procedural rules governing preliminary hearings statewide, and the parties agreed that the District Court should direct its inquiry to the new rule.

Although the new Rule, Fla.R.Crim.P. 3.131(b), provided that the defendant (1) shall be immediately informed of the charge and provided with a copy of the complaint, (2) advise the defendant that, he has a right to remain silent, etc., and (3) he has a right to counsel, and (4) he has a right to communicate with counsel, family, or friends, and (5) the judicial officer shall determine conditions of release. The District Court declared that the practice of the new rule was unconstitutional because it did not provide for a probable cause determination.

> "Under the amended rules every arrested person must be taken before a judicial officer within 24 hours. Fla. Rule Crim. Proc 3.130(b). This "first appearance" is similar to the "first appearance hearing" ordered by the District Court in all but the crucial one: **the magistrate does not make a determination of probable cause**. The rule amendments also changed the procedure for preliminary hearings, restricting them to felony charges and codifying the rule that no hearings are available to persons charged by information or indictment. Gerstein, *supra*

at 109. (emphasis added)

* * *

"In a supplemental opinion the District Court held that the amended rules had not answered the basic constitutional objection, **since a defendant charged by information still could be detained pending trial with out a judicial determination of probable cause**. 356 F Supp 1286 (SD Fla. 1973). Reaffirming its original ruling, **the District Court declared that the continuation of this practice was unconstitutional**. The Court of appeals affirmed,..." *Id.* (emphasis added)

The Supreme Court affirmed the Court of Appeals, in holding "We agree with the Court of Appeals that the Fourth Amendment requires a timely judicial determination of probable cause as a prerequisite to detention, and we accordingly affirm that much of the judgment." *Gerstein*, *supra* at 126.

This ruling of the Supreme Court does not merely establish that an arrestee must be taken before a magistrate shortly after his arrest, but that an arrestee must be taken before a magistrate shortly after arrest for a "probable cause determination."

However, the Eighth Circuit in *Bowlin v. Mease*, Appeal No. 95 -2754 (case at bar) and the Sixth Circuit in *Stone v. Holxberger*, 807 F.Supp. 1325, *aff'd* 23 F.3d 408, ruled that even though the detainee is not given a probable cause determination, a detainee is given all the process received in a *Gerstein* probable cause determination hearing if he is taken before a magistrate for arraignment and a bond hearing.

These rulings of the Circuit Courts are in direct conflict with this Court's ruling in *Gerstein*. If these Circuit Court rulings are allowed to stand it will render this Court's landmark decision, *Gerstein*, meaningless.

II. The Court of Appeals' Interpretation of a *Gerstein* Judicial Determination of Probable Cause Conflicts With the Fifth Circuit's Interpretation and Aggravates the Existing Split of Authority in the District Courts

The Fifth Circuit[1] ruled in *Gerstein*, 483 F.2d 778, that the giving of a Bond Hearing and an arraignment to a detainee does not fulfill the Fourth Amendment requirement of a probable cause determination. However, the Sixth Circuit affirmed a judgment in *Stone v. Holzberger*, 23 F.3d 408, that a Bond Hearing satisfied the *Gerstein* probable cause determination requirement. The Eighth Circuit, case at bar, also held that a Bond Hearing and Arraignment satisfies the *Gerstein* requirement.

The District Court for the Southern District of Florida held that a Bond Hearing and an Arraignment does not satisfy the Fourth Amendment requirement of a judicial determination of probable cause. *Gerstein*, supra at 109. And, to the contrary, the District Court for

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[1] NOTE: The Reece decision was prior to the Fifth Circuit Court of Appeals Reorganization Act of 1980 of which the Fifth Judicial Circuit decisions are also binding on the Eleventh Court. Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981); Stein v. Reynolds Sec., Inc., 667 F.2d 33 (11th Cir. 1982).

the Southern District of Ohio ruled that a Bond Hearing and an Arraignment does satisfy the *Gerstein* probable cause determination requirement. The District Court for the Western District of Missouri, case at bar, relied on and quoted *Stone v. Holzberger*, 807 F.Supp. 1325 (S.D.Ohio 1992), in its ruling that a Bond Hearing and an Arraignment satisfies the Gerstein probable cause determination requirement even thought there has been no determination of probable cause.

This Court should resolve the uncertainty created by these conflicting views.

III. The Decision of the Court of Appeals is Erroneous *in that* an Arraignment and a Bond Hearing are Not the Equivalent of a *Gerstein* Probable Cause Determination

The Supreme Court held, in *Gerstein*, that the common law is the guiding interpretation of the Fourth Amendment. At common law the arrested person would be brought before a magistrate shortly after arrest. The magistrate would examine the arrestee and witness to determine whether there was reason to believe the person had committed a crime. If there was reason to believe the arrestee had committed a crime he would be committed to jail or bail pending trial. If there was no probable cause to believe the arrestee committed a crime he would be discharged from custody.

This Court's ruling shows that not only does an arraignment and bond hearing not provide an arrestee with all of the process normally received in a *Gerstein* probable cause determination

hearing but, in fact, does not provide any of the process required in a *Gerstein* probable cause determination hearing. While a probable cause hearing may be combined with the arrestee's bond hearing or arraignment, this is not a substitute for a probable cause determination. A probable cause determination is just that, to determine whether there was reason to believe the prisoner had committed a crime.

> "At common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest. (citations omitted) The justice of the peace would "**examine**" the prisoner and the witness **to determine whether there was reason to believe the prisoner had committed a crime**. If there was, the suspect would be committed to jail or bailed pending trial. If not, he would be discharged from custody. Gerstein *supra*, at 114. (emphasis added)
>
> * * *
>
> "In dealing with probable cause, however, as the very name implies, **we deal with probabilities**. *Id.*, at 121. (emphasis added)

In *County of Riverside v. McLaughlin*, 500 U.S. 44, Justice O'Conner stated "In Gerstein v Pugh, 420 US 103, 43 L Ed 2d 54, 95 S Ct 854 (1975), this Court held that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest.

This case requires us to define what is "prompt" under Gerstein.

The Circuit Court's judgment is erroneous in that it affirmed the judgment of the District Court which held that even though Bowlin was not given a probable cause determination, Bowlin was given a Bond Hearing and an Arraignment approximately 29 hours after his arrest. Therefore, Bowlin failed to demonstrate that the twenty-nine hour delay was unreasonable and granted summary judgment for Mease.

In *McLaughlin*, this Court defined what is "prompt" under *Gerstein*. It did not define what is "prompt" under a Bond Hearing and an Arraignment. The decision in *McLaughlin* did not establish that a bond hearing or arraignment is a substitute for a probable cause determination, nor did it establish that if a Sheriff takes a detainee before a judge for bond hearing or an arraignment that he has satisfied his obligation to secure a probable cause determination.

The Circuit Court's judgment is also erroneous in that the remanding of a detainee back into the custody of the Sheriff did not legally obligate Mease to hold Bowlin.

The Honorable Justice Story wrote that the Fourth Amendment:

> "is little more then the affirmance of a great constitutional doctrine of the common law. And its introduction into the amendments was doubtless occasioned by the strong sensibility excited, both in England and America, upon the subject of general warrants almost upon the eve of the American Revolution" Story,

Commentaries on the Constitution 3d p.748 (1833).

It is well established at common law that a detention beyond the period within which a warrant could have been obtained rendered the officer liable for false imprisonment. *Twilley v. Perkins*, 77 Md 252 (1893); *Wiggins v. Norton*, 83 Ga 148, 9 SE 607 (1889); *Brock v. Stimson*, 108 Mass 520 (1871). In *Harlow v. Fitzgerald*, 457 U.S. 800, this Court held that an officer is not entitled to qualified immunity if the officer knew or should have known that he was violating the plaintiff's clearly established rights. The *Gerstein* probable cause determination hearing was very well established at the time of Bowlin's arrest.

IV. The Questions Presented are Important

Numerous case cites are not needed to show that the issue of a probable cause determination is an important constitutional issue. A "prolonged detention based on incorrect or unfounded suspicion may unjustly imperil a suspect's job, interrupt his source of income, and impair his family relationships" and has the potential of effecting every person in the United States. Review of the decision below is important because of the cloud it places over the Fourth Amendment and because "The only redress for any such infringements, and the only guaranty of individual rights and property, are understood to consist in the peaceable appeal to the proper tribunals constituted by the government for such purposes." Story, Commentaries on the Constitution 3d p.305 (1833). This case presents an opportunity for the

Court to address the issue and to bring much-needed certainty and uniformity to this area.

The decision below is in both direct and apparent conflict with this Court's holdings in *Gerstein* and *McLaughlin*. If the Circuit Courts' rulings are allowed to stand, it is the end of the *Gerstein* Fourth Amendment's probable cause determination requirement in those Circuits and in other Circuits in the future. This Court should resolve the uncertainty created by those conflicting views.

CONCLUSION

The petition for a writ of certiorari should be granted. In view of the conflict of the decision below with past decisions of this Court, the Court may wish to consider summary reversal.

Respectfully submitted,

Edward W. Bowlin III
312 Weaver Avenue
Lake Wales, Florida 33853
(941) 676-3356

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-2754

Edward W. Bowlin, III	*	
	*	Appeal from the United
Appellant,	*	States District Court
	*	for the Western District
v.	*	of Missouri.
	*	
Lonnie Mease, Sheriff,	*	[UNPUBLISHED]
	*	
Appellee.	*	

Submitted: January 12, 1996

Filed: January 25, 1996

Before FAGG, BOWMAN, and HANSEN, Circuit Judges.

PER CURIAM.

Edward W. Bowlin, III appeals the adverse grant of summary judgment by the District Court[1] in Bowlin's 42 U.S.C. § 1983 action against Stone County Sheriff Lonnie Mease.

On April 6, 1992, at approximately 11:21 a.m., a Stone County, Missouri deputy arrested Bowlin without a warrant for failing to display a valid license plate, and for failing to produce a driver's license in violation of state law. On April 7, at

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[1] The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

approximately 5:31 p.m., Bowlin was arraigned before Stone County Circuit Court Judge William Kirsch. After Bowlin entered a plea of not guilty, Judge Kirsch reviewed the criminal complaints signed by the arresting officer and the prosecutor, and set bond at $500. Because Bowlin was unable to post bond, Judge Kirsch remanded him to the custody of Stone County sheriff Lonnie Mease, where Bowlin remained for nineteen days until bond was posted. Judge Kirsch's affidavit, which was submitted by Mease, stated that "[a] determination of probable cause was neither made nor requested" when Bowlin appeared at his April 7 arraignment. Bowlin claimed Mease's detention of him without a prompt judicial determination of probable cause violated his Fourth and Fourteenth Amendment rights.

The District Court granted Mease summary judgment, which we review de novo, applying the same standard as the district court: whether the record, viewed in a light most favorable to the non-moving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Earnest v. Courtney, 64 F.3d 365, 366-67 (8th Cir. 1995) (per curiam) ; see also Fed. R. Civ. P. 56(c). The Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended restraint on liberty following an arrest without a warrant. Gerstein v. Pugh, 420 U.S. 103, 114, 125-26 (1975). Law enforcement officers may be held liable for Gerstein violations, even if they "were not responsible for the delay in the arraignment," because the officers are under no obligation to continue to hold an arrestee before his arraignment. Wayland v. City of Springdale, Ark. 933 F.2d 668, 670 (8th Cir. 1991).

We agree with the District Court that Bowlin failed to show the thirty-hour delay before arraignment was unreasonable. See County of Riverside v. McLaughlin, 500 U.S. 44, 56-57 (1991) (holding person taken before judicial officer within forty-eight hours of arrest bears burden of proving that delay was unreasonable in relation to time necessary to complete administrative procedures incident to arrest). Furthermore, Mease cannot be liable for any constitutional violation resulting from Judge Kirsch's failure to make a probable cause determination at Bowlin's arraignment, because Judge Kirsch's order remanding Bowlin into Mease's custody until Bowlin had posted bond legally obligated Mease to hold Bowlin. Cf. Patterson v. Von Riesen, 999 F.2d 1235, 1240 (8th Cir. 1993) (noting courts have consistently held that officials—including sheriffs—acting pursuant to facially valid court orders have absolute quasi-judicial immunity from damages for actions taken pursuant to that order).

Accordingly, we affirm the judgment of the District Court, and we deny Bowlin's motion for disciplinary action against Mease's attorney.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

EDWARD W. BOWLIN III,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 94-5024-CV-SW-1
	)	
LONNIE MEASE,	)	
	)	
Defendant.	)	

ORDER

Pending before the Court are the parties' second cross-motions for summary judgment in the above-captioned matter. After reviewing the suggestions filed by the parties in support of and in opposition to said motions, for the reasons set forth below, the Court grants Defendant's motion, and denies Plaintiff's motion.

A movant is entitled to summary judgment pursuant to FED.R.CIV.P. 56(c), "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The moving party bears the burden of proof. Aetna Life Insurance Co. v. Great National Corp., 818 F.2d 19, 20 (8th Cir. 1987). In making a determination of whether this burden has been met, the Court must scrutinize the evidence in the light most favorable to the non-moving party, according the non-moving party the benefit of every factual

inference, Buller v. Buechler, 706 F.2d 844, 846 (8th Cir. 1983), and resolving all doubts as to the existence of any material fact against the moving party. Robert Johnson Grain Co. v. Chem. Interchange Co., 541 F.2d 207, 210 (8th Cir. 1976). It is important to note that disposing of claims by summary judgment "is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action...." Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986). With these principles in mind, the Court turns to a brief examination of the facts.

The parties do not dispute the following facts. On April 6, 1992, at approximately 11:21 a.m., Plaintiff was arrested by a Stone County deputy for failure to display a valid license plate and failure to produce a drivers license in violation of state law. The arrest did not take place pursuant to a warrant, but rather was authorized under Missouri law in that Plaintiff's illegal acts were committed in the presence of the arresting officer. See MO.REV.STAT. § 544.157(1)[1]. On April 7, 1992, at approximately 5:31 p.m., an arraignment was held before the Honorable William Kirsch, a Stone County Circuit Court Judge, at which Defendant entered a plea of not guilty, and waived formal arraignment, reading of the Information and his right to counsel. In addition, after reviewing the criminal complaints signed by the arresting officer and the prosecutor, Judge Kirsch set bond at $500, and being unable to post such, Plaintiff was

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[1] Plaintiff does not contest the legality of his arrest, apparently admitting the existence of probable cause for such.

remanded into the Defendant's custody where he remained for 19 days until bond was posted. In an affidavit submitted in support of Defendant's motion, Judge Kirsch stated that at this hearing, "a determination of probable cause was neither made nor requested."

Pursuant to 42 U.S.C. § 1983, Plaintiff claims Defendant's conduct violated his constitutional rights as set forth in Gerstein v. Pugh, 420 U.S. 103 (1975). In Gerstein, the Supreme court ruled that the Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention following a warrantless arrest. Id. At 125. A Gerstein hearing fulfills the same function for suspects arrested without warrants as the pre-arrest probable cause hearing fulfills for suspects arrested with warrants. King v. Jones, 824 F.2d 324, 327 (4th Cir. 1987). The right to such a hearing may be violated even in instances, such as this one, where it is undisputed as to the existence of probable cause for the arrest. Wayland v. City of Springdale, 933 F.2d 688, 670 (8th Cir. 1991). Police officers, such as Defendant, are liable for actual or nominal damages under § 1983 for detaining an arrestee for too long without a probable cause determination. Id. At 670, 671 n.3.

In County of Riverside v. McLaughlin, 520 U.S. ___, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), the Supreme Court created a burden of proof mechanism by which to evaluate Gerstein claims of delay. A person taken before a judicial officer within 48 hours of his or her arrest bears the burden of proving that the delay was unreasonable in relation the time necessary to complete the administrative procedures incident to the arrest. McLaughlin, 111 S.Ct. at 1670. In the case at bar,

Plaintiff's arraignment and bond hearing took place approximately 29 hours after his arrest. The Court finds that such a hearing provided Plaintiff with all the process normally received in a Gerstein probable cause determination hearing[2]. See Stone v. Holzberger, 807 F.Supp, 1325m 1341 (S.D.Ohio 1992), aff'd, 23 F.3d 408 (6th Cir. 1994). Consequently, Plaintiff has the burden to demonstrate that this twenty-nine hour delay was unreasonable, and because Plaintiff failed to set forth any evidence relating to such, the Court finds entry of summary judgment for Defendant to be both necessary and proper.

Accordingly, it is ORDERED that Defendant's motion for summary judgment is GRANTED.

It is further ORDERED that Plaintiff's motion for summary judgment is DENIED.

DEAN WHIPPLE
UNITED STATES DISTRICT JUDGE

DATED: June 7, 1995.

[2] Nonetheless, the Court strongly urges state trial judges to make an express, detailed and specific determination of probable cause in situations such as the one at bar. Failure to follow this dictate will result, in all likelihood, in additional federal court intervention in state criminal procedure.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 95-2754

Edward W. Bowlin, III	*	
	*	Order Denying Petition
Appellant,	*	for Rehearing and
	*	Suggestion for
v.	*	Rehearing En Banc
	*	
Lonnie Mease, Sheriff,	*	
	*	
Appellee.	*	

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

March 4, 1996

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit